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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

13 RAMONA MAYON,

14 Plaintiff,

15 vs.

16 MAYOR LONDON BREED AND
17 DIRECTOR SHIREEN MCSPADDEN OF
DEPT OF HOMELESSNESS AND
18 SUPPORTIVE HOUSING OF CITY AND
COUNTY OF SAN FRANCISCO, ONLY IN
19 THEIR OFFICIAL CAPACITY, AND DOES
1-50,

20 Defendants.
21

Case No. CGC-24-611907

**DEFENDANTS' REPLY TO OPPOSITION TO
DEMURRER TO PLAINTIFF'S COMPLAINT**

Hearing Date: March 27, 2024

Time: 9:30 a.m.

Place: Dept. 302

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1 **I. INTRODUCTION**

2 Rather than responding to the arguments in the demurrer, the Opposition discusses an elderly
3 man with “heart problems” to whom Plaintiff has no relationship, the special accommodations Ms.
4 Mayon has received to park her car near her RV at the Vehicle Triage Center (“TC”), and a new
5 microwave. The Opposition, like the Complaint, vacillates between complaining that the wellness
6 checks, security, fire code requirements, and on-site therapist are too little (“deliberate indifference”)
7 or too much (interfering with their “quiet enjoyment”). None of the grievances give rise to a
8 cognizable claim by Plaintiff against the City Defendants.

9 Ms. Mayon does not refute that she did not comply with the Tort Claims Act, an essential
10 prerequisite for jurisdiction of the Court. The Opposition attaches a different government claim, dated
11 February 7, 2023, but it relates to the towing of her RV by a third party, on February 9, 2022. That
12 government claim, like the government claim attached with the moving papers, relates to events on the
13 Great Highway, which did not involve the City and occurred years ago. Because no timely or relevant
14 government claim was filed before initiating the lawsuit, the case should be dismissed with prejudice.
15 The Opposition abandons the negligence and fraud claims, which are not cognizable; and no
16 allegations explain the basis to sue the Mayor or Director McSpadden. (Code Civ. Proc., § 430.10 (e)
17 and (g).)

18 Ms. Mayon’s states her purpose in filing this lawsuit is declaratory relief. But, Government
19 Code Sections 820.2 and 855.4 that immunize the City Defendants from her tort claims, apply with the
20 same force and effect to shield the City Defendants from the declaratory relief claim. There is,
21 moreover, no ripe or “actual controversy.” Plaintiff wishes to rewrite the laws to turn her into a
22 “tenant,” despite living rent free in her own RV. The law and the written agreement that she signed
23 could not be clearer: (1) Plaintiff is a “guest” not a tenant at the Bayshore Vehicle Triage Center
24 (“VTC”); (2) she does not pay rent; (3) an RV owned by her is not a “residential *rental* unit” or a
25 “residential *real property* dwelling”; (4) the City Defendants are not “landlords”; and (5) she expressly
26 agreed that she has “no right or interest under California or San Francisco landlord tenant laws.” The
27 demurrer should be sustained without leave to amend.

28 ///

II. LEGAL ARGUMENT

The Opposition's silence to the legal arguments set forth in the Demurrer make it "apparent the complaint's defects cannot be cured." (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 506–507, as modified (June 12, 2013), *disapproved on another ground in Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, citations and quotation marks omitted); *Arce v. Childrens Hospital Los Angeles* (2012) 211 Cal.App.4th 1455, 1497, fn. 19 ('[t]he plaintiff has the burden of proving that an amendment would cure the defect,' " and where the plaintiff has "not offered any proposed amendment, [the plaintiff has] not carried [its] burden"); *Long v. Century Indemnity Co.* (2008) 163 Cal.App.4th 1460, 1468 ("[l]eave to amend should not be granted where ... amendment would be futile").¹

A. The Court Lacks Jurisdiction Because the Government Claims are Untimely and the Complaint Bears No Resemblance to the Government Claims

Before suing a public entity, Ms. Mayon must comply with the Tort Claims Act. (Gov. Code § 905, *et seq.*; *Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230.) Government Code § 945.4, 911.2 foreclose Plaintiffs' complaint. (*Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303; *see also, Gong v City of Rosemead* (2014) 226 Cal.App.4th 363, 371, 374 (citing Govt Code § 911.2, presentation of claim for money or damages prior to filing suit is a condition precedent to lawsuit); *see also (Crow v. State of Cal.* (1990) 222 Cal.App.3d 192, 202, *disapproved on another ground by Regents of Univ. of Cal. v. Super. Ct.* (2018) 4 Cal.5th 607, 634, fn. 7; and *see Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 303.)).

The Opposition acknowledges that she failed to comply with it. (RJN, *passim*, Ikels Decl., Exh. A (*Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 368 fn. 1, 376; *see also* RJN, Exh. 1 (court may take judicial notice of the government claim file for a demurrer).) There is no dispute that Plaintiff has not satisfied the five requirements to bring this lawsuit. Both Government Claims deal

¹ As an initial matter, Plaintiff never properly served the summons on Director McSpadden, who should be dismissed. Plaintiff also did not properly serve the Opposition. We filed and served the Demurrer by mail, on February 29, 2024, and by email on March 4, 2024, setting the hearing for March 26. The Opposition contains a proof of service of mailing the Opposition on March 13, 2024, but the City received it on March 18, 2024 and the mailing stamp shows it occurred after March 14. An Opposition must be served to ensure delivery by the same or next day. C.C.P. § 1005.13(c).

1 with San Francisco residents confronting Ms. Mayon on the Great Highway and a third party that
2 towed her RV. (See Demurrer, pp. 11-13 (and cases cited therein); Opp. Exh. A (a February 7, 2023
3 claim regarding her RV being towed in February 2022 by “Atlas Towing Company”).) Putting aside
4 the fact that the City Defendants did not tow her RV, the events occurred in February 2022. (Opp.
5 Exh. A.) A government claim relating to those events, even assuming they were cognizable against
6 San Francisco, should have been submitted by August 2022, and an action filed within six months,
7 February 2023. (Gov. Code § 911.2(six month deadline after date the underlying events accrued).) The
8 Opposition attaches the February 28, 2023 City’s letter, denying the claim. Putting aside the
9 jurisdictional bar to the untimely government claim, Ms. Mayon needed to initiate an action within six
10 months. This lawsuit was filed a year later, on January 26, 2024. (Gov. Code § 945.6(a)(1 (six month
11 deadline to file after denial of government claim); *Silva v. Crain* (9th Cir. 1999) 169 F.3d 608, 611.)

12 In any event, neither of the government claims has any bearing on the allegations in the
13 Complaint. A party cannot file suit on any legal or factual basis outside those that are listed in its
14 Government Claim. (*Nelson v. State of California* (1982) 139 Cal.App.3d 72, 79; *Williams v. Braslow*
15 (1986) 179 Cal.App.3d 762, 769–70; *Hernandez*, at 1231 (upholding dismissal because the factual
16 basis for recovery is not ‘fairly reflected’ in the plaintiff’s government claim”); see also *Turner v.*
17 *State of California* (1991) 232 Cal.App.3d 883, 887-888, 891 (complaint properly dismissed because
18 of variance between government claim and complaint). The complaint refers to the homeless services
19 at the Bayshore VTC, while the government claims refer to Ms. Mayon’s confrontations with residents
20 living near the Great Highway and a towing company when she had parked her RV there, years prior.

21 There is no means to cure the jurisdictional deficiency. (See *Santee v. Santa Clara City Office*
22 *of Education* (1990) 220 Cal.App.3d 702, 713; *Cole v. Los Angeles Unified School Dist.* (1986) 177
23 Cal.App.3d 1, 5 (holding that the statutory period of limitations for actions against a public entity is
24 “mandatory and must be strictly complied with.”).) No government claim was filed about this lawsuit
25 and the two other government claims were not timely submitted, accordingly, this Court lacks
26 jurisdiction. (Cf. Opposition, Exh. A (February 2022 events referenced in a February 2023
27 Government Claim; RJN, Ikels Decl. Exh. A (Claim Form submitted on March 1, 2021, and denied on
28 March 26, 2021) to Complaint filed on January 26, 2024.) The action should be dismissed with

1 prejudice.

2 **B. Plaintiff Has Abandoned The Negligence And Fraud Claims**

3 The Complaint pleads two claims, one for negligence and for fraud. As discussed in the
4 Demurrer, neither are cognizable as each of the requisite elements is missing from the Complaint.
5 (Demurrer, pp. 14-16.) In response, the Opposition dismisses both claims, and Plaintiff states “this is
6 not a tort claim asking for money or damages of any kind.” (Opp., p. 3:1-2.)

7 Another problem discussed in the moving papers, but unanswered by the Opposition, is that
8 neither the Mayor nor Director McSpadden are mentioned in the Complaint. There is no legal basis to
9 sue either leader and they should both be dismissed.

10 The Court should sustain the demurrer without leave to amend as to the negligence and fraud
11 claims, and dismiss both the Mayor and Director McSpadden with prejudice.

12 **C. The Declaratory Relief Claim is Not a Mechanism to Rewrite Statutes**

13 The Opposition states that Plaintiff is seeking a “Declaratory Statement to clarify that is built
14 into the VTC which is called a ‘low barrier navigation centers’ to be allowed by right,” and then refers
15 to Welfare and Institutions Code (“WIC”) Section 8255. (Opp. p. 3, lines 3-9.) The Opposition then
16 bolds the word “tenant” each time it is mentioned in Section 8255. As an initial matter, “the grounds
17 for such relief must be specifically pleaded in the complaint,” which did not occur here. (*Davis v.*
18 *Farmers Ins. Exch.*, 245 Cal. App. 4th 1302, 1325–26 (2016), as modified on denial of reh'g (Apr. 21,
19 2016) (citations omitted).)

20 Plaintiff cannot cure the deficiencies through amendment, because the factual allegations and
21 the exhibits attached to the pleading, demonstrate that amendment would be futile. (Demurrer, pp. 9-
22 10, 23.) This lawsuit fundamentally misperceives the purpose and limitations of a declaratory relief
23 action. “[A]ctions for declaratory relief involve matters of practice and procedure only and are not
24 intended in any way to enlarge the jurisdiction of courts over parties and subject-matter.” (*Carrier v.*
25 *Robbins* (1952) 112 Cal. App. 2d 32, 36.) It is not a means to challenge state and local ordinances
26 defining tenant, rent, residential dwelling units, and landlord. Under Code of Civil Procedure Section
27 1060, a declaratory relief claim must be based on a ripe, “actual controversy” as to “legal rights or
28 duties” regarding a “written instrument...including a determination of any question of construction or

1 validity arising under the instrument or contract,” or “property.” There is not an “actual controversy”
2 and her claim is not “ripe,” within the meaning of Code of Civil Procedure section 1060.

3 *First*, a declaratory relief claim does not empower the judiciary to interfere with the legislative
4 function, such as a city’s economic and homeless policies, the Safe Parking Program, allocation of
5 budget and taxpayer resources, or bypass voter-passed propositions and local ordinances, some of
6 which is reflected in Exhibit D to the Complaint. (*Carrier, supra*, at 36 (dismissing lawsuit against city
7 of San Diego, where plaintiff challenged the wage rate set by the Board of Supervisors); *see also*
8 *Spencer v. City of Alhambra*, 44 Cal.App.2d 75, 77.)

9 *Second*, as explored in the Demurrer, the laws defining tenant, landlord, rent, and residential
10 dwelling units are clear and unambiguous. Plaintiff does not take issue with the “cardinal rule” that
11 “[c]ourts have no power to legislate.” (*Id.*; *Anderson v. City of Long Beach* (1959) 171 Cal. App. 2d
12 699, 701.). In construing a statute, it is the duty of the court “simply to ascertain and declare what is in
13 terms or in substance contained therein, not to insert what has been omitted or to omit what has been
14 inserted.” (Code Civ.Proc. § 1858.) Plaintiff may not ask a court to rewrite the laws passed by the state
15 legislature and Board of Supervisors that define “tenant,” “landlord,” “rent,” and “rental dwelling
16 units.” (*See* Demurrer, pp. 19-20 (describing the defined terms in state and local law). “When the
17 statutory language is clear there can be no room for construction of the statute. Where there is no
18 ambiguity in the statutory language, the power to construe it does not exist.” (*San Joaquin Blocklite,*
19 *Inc. v. Willden* (1986) 184 Cal. App. 3d 361, 367–68 (citations omitted); *see also LGCY Power, LLC*
20 *v. Superior Ct.* (2022) 75 Cal. App. 5th 844, 860–61 (“we are not empowered to insert language into a
21 statute, as ‘doing so would violate the cardinal rule of statutory construction that courts must not add
22 provisions to statutes.’”); *People v. Pacific Guano Co.* (1942) 55 Cal.App.2d 845, 849.)

23 *Third*, the Opposition, like the Complaint, does not identify an “instrument” or “property” right
24 at issue. Plaintiff owns her RV. She does not pay rent. She does not live in “housing” owned and
25 operated by a landlord. She does not have a lease. She has expressly agreed she is a “guest” on the
26 premises and acknowledged, in writing, that she “clearly” is not a tenant. (Compl., p. 1, lines 22-23,
27 Exh. C, p. 1.) In fact, Ms. Mayon’s believes it is “culturally insensitive” to try to provide her
28 “housing”, for her to pay rent, or to live in building. (*See*, Section II, *supra*, Compl., p. 10, parag. “O”,

1 to p. 3-4; RJN, Exh. A.) She is free to embrace that philosophy, but her statements reflect there is no
2 “ripe” issue.

3 Ms. Mayon is not, by law or logic, a “tenant” and the City Defendants are not landlords.
4 Plaintiff concedes she signed the Bayview Vehicle Triage Center Participant Agreement to gain access
5 as a guest, and that the landlord-tenants laws do not apply, and she does “**not have tenancy rights.**”
6 (Demurrer, pp. 7-9; see Compl., p. 1, lines 22-24; Exh. C to Complaint, p. 1 (emphasis in original).)
7 Even if the Court could rewrite all the laws, and change the unambiguous terms of the VTC
8 Agreement, the WIC § 8255 provision cited in the Opposition does not encompass a self-owned RV
9 with free access for parking on a premise as a guest. WIC § 8255 repeatedly connects “tenant” to
10 “permanent housing” and “housing.” Housing is defined in WIC § 16523 as having the same meaning
11 of “Chapter 2 (commencing with Section 1940) of this Title 5 of Part 4 of Division 3 of the Civil
12 Code”). Civil Code 1940 is defined as the “*Hiring of Real Property*”. (Emphasis supplied.) It goes
13 without saying that Plaintiff’s RV is not real property. Section 1946.2, subdivision (i)(3) defines
14 “[t]enancy” to be “the *lawful* occupation of a *residential real property*.” Lawful occupancy, in turn,
15 is connected to paying rent for exclusive occupancy. The term “rent” means “to hire real property and
16 includes a lease or sublease.” (Civ. Code § 1954.26(e).) The Civil Code specifically excludes
17 innkeepers and proprietors. It further clarifies that “persons who hire” are not those, such as Ms.
18 Mayon, that have “not made valid *payment* for all room and other related charges owing.” (Civ. Code
19 ¶ 1940(b)(1).) The Opposition also ignores San Francisco’s Administrative Code that defines a “rental
20 unit” as “residential dwelling units in the City *together with the land and appurtenant buildings*
21 *thereto...*”(Admin. Code § 37.2(r).) “Rent” is defined as “the *consideration*” for the use, i.e.
22 “monies”. (Admin. Code § 37.2(q).

23 It has been the law for over 100 years that a guest given permission to “use” a premise, under
24 the control of another, has no interest in the realty and does not have an estate or interest in the
25 property and is not a “tenant.” (*People v. Minervini* (1971) 20 Cal. App. 3d 832, 840, 112 (guest has
26 only the right to use the premises, subject to the landlord's retention of control and right of access);
27 *Bullock v. City & Cnty. of San Francisco* (1990) 221 Cal. App. 3d 1072, 1096–97 (detailed discussion
28 of the meaning of “guests” and lodgers, and distinctions in the terminology of “tenant”, holding city

could not bar conversion of rented hotel rooms into a hotel), *distinguished on other grounds Griset v. Fair Pol. Pracs. Comm'n* (2001) 25 Cal. 4th 688, 698).)

Indeed, guests (or “lodgers”) are exempt from the statutory provisions regarding a landlord and tenant relationship, unless there is a written agreement to the contrary. Here, the Agreement states Ms. Mayon is a “guest” to the premises, with “no tenancy rights,” there is no lease, she does not live in a residential rental unit or real property, and she does not pay rent or consideration of any kind. (Compl., Exh. C.) The long list of services alleged in the Complaint, such as *free* laundry service, *free* food, *free* cleaning of surroundings, *free* utilities, *free* security, *free* therapy, *free* wellness checks, *free* WIFI, *free* dispel any basis to contend there is a landlord-tenant relationship. (Demurrer, pp. 9-10; *see also Roberts v. Casey* (1939) 36 Cal. App. 2d Supp. 767, 774 (a guest has “use” of premises but is not a tenant, and the provision of services by the owner, such as laundry and cleaning, are as a “proprietor” not a landlord).)

In any event, supposing the City Defendants could be landlords, they are specifically excluded from the landlord-tenant relationship, as a rental unit “shall not include...“dwelling units whose rents are controlled or regulated by any government unit, agency, or authority.” (Admin. Code § 37.2(r)(3).) Numerous California state laws reflect the same distinctions. (*See, e.g.,* California Health and Safety Code § 199967 (“building component”) § 19970 (“dwelling unit” is a “habitable room(s)”; Cal. Rev. & Tax Code § 20628 (residential unit means an apartment or similar dwelling”); Civil Code Section 1675(a) (“residential property means *real property* consisting of a dwelling”); Civil Code Section 1954.202(b) (“‘Landlord’ means an owner of a *residential rental property*.”)

Finally, another unanswered reason to sustain the demurrer is that Ms. Mayon cannot initiate a lawsuit to second-guess the City’s budgetary and policy decisions. (*Thorn v. City of Glendale* (1995) 28 Cal. App. 4th 1379, 1385.) The City Defendants are immunized, under Govt. Code sections 815.2, 818.8, 821.6 and 820.2, for both official and discretionary acts, such as passing ordinances, making policy decisions, and creating the pilot “Safe Parking Program” project, which was enacted to redress the serious and significant homeless problems in the City balanced against the concerns and rights of the public, the taxpayers and the residents. (*See* Demurrer, p. 12-13; Complaint, Exh. E; *Greenwood v. City of Los Angeles* (2023) 89 Cal. App. 5th 851, 862, *reh’g denied* (Apr. 20, 2023), *review denied*

(July 12, 2023) (plaintiff cannot sue a city for the alleged contraction of typhus from a “dangerous condition” near plaintiff’s work, because cities are immunized for their policy, legislative and planning functions and decisions); *and see Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981.) The Goldilocks criticisms that the free wellness checks, therapists, laundry, catering, utilities, facilities, and security at the VTC are both too much and not enough are not grounds for declaratory relief. The services, moreover, are alleged to be provided by non-parties Episcopal Community Services, Bayview Hunter's Point, Foundation; and Urban Alchemy, and not the City Defendants. For similar reasons, a declaratory relief claim is not a proper mechanism to ask this Court to order the City Defendants, through the taxpayers, to buy Ms. Mayon gift cards, replace her RV, change the state’s fire code, or build her a workshop. (Demurrer, p. 10 (citations to various allegations in the Complaint provided therein).)

Because the judiciary “has neither the power nor the duty to determine the wisdom of any economic policy ... and courts will not “override the legislative function,” or laws enacted in furtherance of economic policies for the general welfare, the demurrer should be sustained without leave to amend, and the action should be dismissed. (*See, e.g., Max Factor & Co. v. Kunsman* (1936) 5 Cal.2d 446, 454.)

III. CONCLUSION

For the foregoing reasons, the Demurrer should be sustained without leave to amend.

Dated: March 20, 2024

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PROOF OF SERVICE

I, KASSY ADAMS, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On March 20, 2024, I served the following document(s):

DEFENDANTS' REPLY TO OPPOSITION TO DEMURRER TO PLAINTIFF'S COMPLAINT

on the following persons at the locations specified:

Ramona Mayon
1559 Sloat Blvd, Suite B-Box 175,
San Francisco, California 94132
ramonamayon@yahoo.com
telephone: 415-595-6308

Plaintiff in Pro Per

in the manner indicated below:

☒ **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

☒ **BY ELECTRONIC MAIL:** I caused a copy of such document to be transmitted via electronic mail in portable document format ("PDF") Adobe Acrobat from the electronic address: kassy.adams@sfcityatty.org.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed March 20, 2024, at San Francisco, California.



KASSY ADAMS